

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSHUA PORTER and SHARKEY
SIMMONNS, Individually and on Behalf of
All Others Similarly Situated

Plaintiffs,

-against-

MOOREGROUP CORPORATION, JOHN
MOORE, GARY MOORE AND MARTIN
MOORE, Jointly and Severally,

Defendants.

Case No.: 17-cv-7405 (KAM) (VMS)

**ANSWER AND AFFIRMATIVE
DEFENSES**

JURY TRIAL DEMANDED

MOOREGROUP CORPORATION, JOHN MOORE, GARY MOORE AND MARTIN MOORE
(collectively known as the “Defendants”), by and through their attorneys, Fisher Taubenfeld
LLP, for their Answer to the Complaint respectfully allege as follows:

NATURE OF THE ACTION

1. Defendants deny the allegations stated in Paragraph 1 of the Complaint.
2. Paragraph 2 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 2 of the Complaint.
3. Paragraph 3 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiffs have asserted various claims in this lawsuit.
4. Paragraph 4 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiffs have asserted this lawsuit on behalf of themselves and other employees.

JURISDICTION AND VENUE

5. Paragraph 5 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiffs purport to invoke the jurisdiction of the Court as set forth in Paragraph 5.
6. Paragraph 6 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiffs purport to invoke the venue of the Court as set forth in Paragraph 6.
7. Paragraph 7 of the Complaint sets forth a legal conclusion, and therefore no response is required.

THE PARTIES

8. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8.
9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9.
10. Defendants admit the allegations stated in Paragraph 10 of the Complaint.
11. Defendants admit that Plaintiffs as set for in Paragraph 11 have signed various consent forms.
12. Defendants admit the allegations stated in Paragraph 12 of the Complaint.
13. Defendants deny the allegations stated in Paragraph 13 of the Complaint.
14. Defendants deny the allegations stated in Paragraph 14 of the Complaint
15. Defendants admit the allegations stated in Paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint sets forth a legal conclusion, and therefore no response is required.

17. Paragraph 17 of the Complaint sets forth a legal conclusion, and therefore no response is required.

18. Defendants deny the allegations stated in Paragraph 18 of the Complaint.

19. Paragraph 19 of the Complaint sets forth a legal conclusion, and therefore no response is required.

20. Defendants admit the allegations stated in Paragraph 20 of the Complaint.

FLSA COLLECTIVE ACTION ALLEGATIONS

21. Paragraph 21 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiffs have asserted this lawsuit on behalf of themselves and other employees.

22. Paragraph 22 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 23 of the Complaint.

RULE 23 CLASS ACTION ALLEGATIONS

24. Paragraph 24 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants admit that Plaintiffs have asserted this lawsuit on behalf of themselves and other employees.

25. Paragraph 25 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 26 of the Complaint.
27. Paragraph 27 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 27 of the Complaint.
28. Paragraph 28 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 28 of the Complaint.
29. Paragraph 29 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 29 of the Complaint.
30. Paragraph 30 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 30 of the Complaint.
31. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 31.
32. Paragraph 32 of the Complaint sets forth a legal conclusion, and therefore no response is required. To the extent a response is required, Defendants deny the allegations stated in Paragraph 32 of the Complaint.

33. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33.

STATEMENT OF FACTS

34. Defendants admit the allegations stated in Paragraph 34 of the Complaint.

35. Defendants deny the allegations stated in Paragraph 35 of the Complaint.

36. Defendants deny the allegations stated in Paragraph 36 of the Complaint.

37. Defendants deny the allegations stated in Paragraph 37 of the Complaint.

38. Defendants deny the allegations stated in Paragraph 38 of the Complaint.

39. Defendants deny the allegations stated in Paragraph 39 of the Complaint.

40. Defendants deny the allegations stated in Paragraph 40 of the Complaint.

41. Defendants deny the allegations stated in Paragraph 41 of the Complaint.

42. Defendants deny the allegations stated in Paragraph 42 of the Complaint.

43. Defendants deny the allegations stated in Paragraph 43 of the Complaint.

44. Defendants deny the allegations stated in Paragraph 44 of the Complaint.

45. Defendants deny the allegations stated in Paragraph 45 of the Complaint.

46. Defendants deny the allegations stated in Paragraph 46 of the Complaint.

47. Defendants deny the allegations stated in Paragraph 47 of the Complaint.

48. Defendants deny the allegations stated in Paragraph 48 of the Complaint.

49. Defendants deny the allegations stated in Paragraph 49 of the Complaint

50. Defendants deny the allegations stated in Paragraph 50 of the Complaint.

51. Defendants deny the allegations stated in Paragraph 51 of the Complaint

52. Defendants deny the allegations stated in Paragraph 52 of the Complaint.

53. Defendants deny the allegations stated in Paragraph 53 of the Complaint.

54. Defendants deny the allegations stated in Paragraph 54 of the Complaint.

55. Defendants deny the allegations stated in Paragraph 55 of the Complaint.

56. Defendants deny the allegations stated in Paragraph 56 of the Complaint.

57. Defendants deny the allegations stated in Paragraph 57 of the Complaint.

58. Defendants deny the allegations stated in Paragraph 58 of the Complaint.

59. Defendants deny the allegations stated in Paragraph 59 of the Complaint.

60. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 60.

61. Paragraph 61 of the Complaint sets forth a legal conclusion, and therefore no response is required.

62. Defendants deny the allegations stated in Paragraph 62 of the Complaint.

63. Defendants deny the allegations stated in Paragraph 63 of the Complaint

64. Paragraph 64 of the Complaint sets forth a legal conclusion, and therefore no response is required.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT – UNPAID OVERTIME
(Brought on Behalf of Plaintiffs and the Collective Action Members)

65. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 64 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.

66. Paragraph 66 of the Complaint sets forth a legal conclusion, and therefore no response is required.

67. Paragraph 67 of the Complaint sets forth a legal conclusion, and therefore no response is required.

68. Paragraph 68 of the Complaint sets forth a legal conclusion, and therefore no response is required.

SECOND CAUSE OF ACTION
NEW YORK LABOR LAW – UNPAID OVERTIME
(Brought on Behalf of Plaintiffs and the Class Members)

69. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 68 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.

70. Paragraph 70 of the Complaint sets forth a legal conclusion, and therefore no response is required.

71. Paragraph 71 of the Complaint sets forth a legal conclusion, and therefore no response is required.

THIRD CAUSE OF ACTION
NEW YORK LABOR LAW – FAILURE TO PROVIDE WAGE NOTICE
(Brought on Behalf of Plaintiffs and the Class Members)

72. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 71 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.

73. Paragraph 73 of the Complaint sets forth a legal conclusion, and therefore no response is required.

74. Paragraph 74 of the Complaint sets forth a legal conclusion, and therefore no response is required.

FOURTH CAUSE OF ACTION
NEW YORK LABOR LAW – FAILURE TO PROVIDE WAGE STATEMENTS
(Brought on Behalf of Plaintiffs and the Class Members)

75. Defendants repeat, reiterate and reallege each and every response contained in paragraphs 1 through 74 above, as if fully set forth herein at length, and deny each and every allegation not unequivocally admitted in this Answer.

76. Paragraph 76 of the Complaint sets forth a legal conclusion, and therefore no response is required.

77. Paragraph 77 of the Complaint sets forth a legal conclusion, and therefore no response is required.

PRAYER FOR RELIEF

Defendants are not required to respond to the Complaint's "Prayer for Relief" paragraph as that paragraph is merely characterizations of the relief Plaintiffs seek. To the extent that the prayer for relief is deemed to contain allegations, Defendants deny each and every allegation and specifically deny that Plaintiffs are entitled to damages, costs, interest, and any other form of relief.

DEFENDANTS' AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

78. Plaintiffs' claims, in whole or in part, fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

79. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

80. Defendants have at all times acted in good faith and had reasonable grounds for believing that their pay practices complied with the FLSA and NYLL.

FOURTH AFFIRMATIVE DEFENSE

81. Defendants are entitled to a set-off against any additional compensation that was paid to Plaintiffs over and above their wages.

FIFTH AFFIRMATIVE DEFENSE

82. Plaintiffs' claims are barred, in whole or in part, by the *de minimis* doctrine.

ADDITIONAL AFFIRMATIVE DEFENSES

83. Defendants reserve the right to plead additional affirmative defenses until and through the trial.

WHEREFORE, Defendants pray that the Court enter a judgment:

1. Dismissing the Complaint with prejudice;
2. Granting Defendants their costs, including attorneys' fees, incurred in this action; and
3. Granting such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Defendants hereby demand a jury trial on all claims for relief to which they have a right to a jury trial.

Dated: New York, New York
February 23, 2018

Respectfully submitted,

_____/s/_____
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